

REMARKS/ARGUMENTS

In the Office Action dated November 2, 2007, the Examiner required the election of a single disclosed species from the species recited in the claims/specification. Accordingly, Applicants provisionally elect, with traverse the following.

4-bromo-6-[3-(4-chlorophenyl)propoxy]-5-(3-pyridylmethylamino)-3-(2H)-pyridazinone.

Claims 1-9 read on the elected species.

Applicants request that should the elected species be found allowable, the Examiner expand the search to include non-elected species.

Divisional applications filed thereafter claiming the non-elected species should not be subject to a double patenting ground of rejection 35 U.S.C. §121, In re Joyce (Commr. Pat. 1957) 115 USPQ 412.

The Examiner alleges that the species recited in the specification are patentably distinct. However, the burden of proof is on the Office to provide reasons and/or examples to support any conclusions with regard to patentable distinction M.P.E.P. §803. Applicants respectfully traverse the election requirement on the ground that no adequate reasons and/or examples have been provided to support patentable distinctness. Rather, the Office merely stated conclusions.

Accordingly, the Office has failed to meet the burden necessary to sustain the election requirement, and the Office has not shown that a burden exists in searching all the species.

Further, M.P.E.P. §803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits even though it includes claims to distinct and independent inventions.

Applicants submit that a search of the entire application would not constitute a serious burden on the Office.

In chemical cases a specified group of materials which do not necessarily belong to an otherwise class can be claimed together. Separate substances, which could not be defined by generic language but which nevertheless have a community of chemical or physical characteristics should be examined together if they have at least one property in common which is mainly responsible for the claimed relationship. The same utility in a generic sense suffices.

Applicants make no statement regarding the patentable distinctness of the species, but note that for the election to be proper, there must be patentable differences between the species as claimed. M.P.E.P. §808.01(a).

Applicants' election is for examination only.

Respectfully submitted,

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